

AMENDED IN SENATE AUGUST 7, 2000
AMENDED IN SENATE JUNE 14, 2000
AMENDED IN ASSEMBLY MAY 16, 2000
AMENDED IN ASSEMBLY APRIL 27, 2000
AMENDED IN ASSEMBLY APRIL 13, 2000
AMENDED IN ASSEMBLY MARCH 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2069

Introduced by Assembly Member Corbett

February 22, 2000

An act to amend Section 1714.10 of the Civil Code, and to add Section 11580.03 to the Insurance Code, relating to ~~insurance~~ attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 2069, as amended, Corbett. ~~Insurers~~ Attorneys: defense of insureds.

Existing decisional law in this state deems that an attorney who is hired by an insurance company to defend an insured represents 2 clients, the insured and the insurer. Existing rules of professional conduct for attorneys, as interpreted by judicial decision relating to conflicts of interest, require a court to disqualify an attorney from representing a client if the attorney is representing a client with interests that are adverse to a former client and there is a substantial

relationship between the subjects of the current and former representation. Those rules and decisions in all but a few instances also require a court to disqualify an attorney from representing a client where the attorney has another current client in a wholly unrelated matter whose interests are adverse to the first client.

This bill would prohibit an attorney from being disqualified for a conflict of interest when representing an insured of an insurer at the same time as representing a party against another party insured by the same insurer. This bill would also declare the intent of the Legislature to clarify a specific judicial decision regarding conflicts of interest when lawyers are retained by insurers to represent policyholders, as specified.

Existing law requires a court, prior to the filing of an action by a party against an attorney for a civil conspiracy with his or her client arising out of an attempt to contest or compromise a claim, to determine that there is a reasonable probability that the party will prevail in the action.

This bill would require the attorney rather than a party to raise that defense upon the first court appearance.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 1714.10 of the Civil Code is*
2 *amended to read:*
3 1714.10. (a) No cause of action against an attorney for
4 a civil conspiracy with his or her client arising from any
5 attempt to contest or compromise a claim or dispute, and
6 which is based upon the attorney's representation of the
7 client, shall be included in a complaint or other pleading
8 unless the court enters an order allowing the pleading
9 that includes the claim for civil conspiracy to be filed after
10 the court determines that the party seeking to file the
11 pleading has established that there is a reasonable
12 probability that the party will prevail in the action. The
13 court may allow the filing of a pleading claiming liability
14 based upon such a civil conspiracy following the filing of



1 a verified petition therefor accompanied by the proposed
2 pleading and supporting affidavits stating the facts upon
3 which the liability is based. The court shall order service
4 of the petition upon the party against whom the action is
5 proposed to be filed and permit that party to submit
6 opposing affidavits prior to making its determination.
7 The filing of the petition, proposed pleading, and
8 accompanying affidavits shall toll the running of any
9 applicable statute of limitations until the final
10 determination of the matter, which ruling, if favorable to
11 the petitioning party, shall permit the proposed pleading
12 to be filed.

13 (b) Failure to obtain a court order where required by
14 subdivision (a) shall be a defense to any action for civil
15 conspiracy filed in violation thereof. The defense shall be
16 raised by the party attorney charged with civil conspiracy
17 upon that party's attorney's first appearance by
18 demurrer, motion to strike, or such other motion or
19 application as may be appropriate. Failure to timely raise
20 the defense shall constitute a waiver thereof.

21 (c) This section shall not apply to a cause of action
22 against an attorney for a civil conspiracy with his or her
23 client, where (1) the attorney has an independent legal
24 duty to the plaintiff, or (2) the attorney's acts go beyond
25 the performance of a professional duty to serve the client
26 and involve a conspiracy to violate a legal duty in
27 furtherance of the attorney's financial gain.

28 (d) This section establishes a special proceeding of a
29 civil nature. Any order made under subdivision (a), (b),
30 or (c) which determines the rights of a petitioner or an
31 attorney against whom a pleading has been or is proposed
32 to be filed, shall be appealable as a final judgment in a civil
33 action.

34 (e) Subdivision (d) does not constitute a change in,
35 but is declaratory of, the existing law.

36 *SEC. 2.* Section 11580.03 is added to the Insurance
37 Code, to read:

38 11580.03. (a) Disqualification of an attorney retained
39 by an insurer to provide representation under a policy of
40 insurance shall not be required solely because that

1 attorney represents a party against another party insured
2 by the insurer.

3 (b) It is the intent of the Legislature to clarify the
4 holding in State Farm Mutual Auto Insurance Company
5 v. Federal Insurance Company (1999) 72 Cal.App.4th
6 1422, to the extent that it is inconsistent with *the specific*
7 *issue in* subdivision (a).

